

Amendment 91-224

Inapplicability of Basic VFR Weather Minimums for Helicopter Operations

Adopted: September 16, 1991

Effective: September 23, 1991

(Published in 56 FR 48088, September 23, 1991)

SUMMARY: This action corrects an unintended restriction on helicopter operations conducted outside of controlled airspace below 1,200 feet above the surface. Section 91.155 of the Federal Aviation Regulations, as amended, technically requires the pilot of a helicopter conducting such operations to maintain greater distances from clouds when the visibility is at or above the minimum required than when the visibility is less than the minimum required. This was not the intent of the amendment. The intent of § 91.155 is to allow helicopters to operate under visual flight rules (VFR), regardless of flight visibility, provided the other criteria of that section are met. This action clarifies the intent of the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I. Boxer, (202) 267-9241, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, the Federal Aviation Administration (FAA) published a final rule that revised cloud clearance minimums for fixed-wing aircraft in uncontrolled airspace [54FR40324]. Helicopters, under the previous rule, were permitted to fly clear of clouds, regardless of flight visibility, provided the flight was conducted outside controlled airspace below 1,200 feet above the surface. The language used in the revised rule was intended to provide the same level of exemption to helicopters as existed under the old rule. Section 91.155(b)(1), provided that when the visibility is below 1 mile during the day and below 3 miles at night, helicopters may fly clear of clouds outside of controlled airspace, and below 1,200 feet above the surface, if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision. It was brought to the FAA's attention by the U.S. Army that the wording of § 91.155(b)(1) appears to restrict helicopters to the same cloud clearance criteria as airplanes when flight visibility is above 3 miles at night. This interpretation of the rule is not intended. The change to § 91.155 was made to restrict fixed-wing aircraft to the same cloud clearance and visibility requirements in uncontrolled airspace as in controlled airspace. The FAA did not intend to remove the then-existing exceptions provided to helicopters under the rule.

Helicopters have the ability to operate at lower speeds and with a significantly higher degree of maneuverability than airplanes. These qualities allow a helicopter to be operated at lower visibility and cloud clearance distances while maintaining the same degree of safety as fixed-wing aircraft flying under more restrictive minima. The exception incorporated in § 91.155 is designed to allow the pilot of a helicopter to take advantage of the aircraft's abilities while maintaining the same degree of safety. Therefore, when a helicopter operates in uncontrolled airspace below 1,200 feet above the surface the pilot need only remain clear of clouds regardless of flight visibility.

Reason for No Notice and Immediate Adoption

This amendment is adopted as a final rule to clarify the intent of an agency regulation. Accordingly, this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553 (B). Because this amendment simply clarifies the intent of an existing regulation, I find that good cause exists for making the amendment effective upon publication.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs.

There are no costs associated with this amendment. It merely clarifies the original intent to continue to allow helicopters, operating in uncontrolled airspace below 1,200 feet above the surface, to remain clear of clouds only, regardless of flight visibility.

The FAA finds that this interpretive amendment is covered by the regulatory evaluation for the final rule published September 22, 1989, and further regulatory evaluation is not required. A copy of that regulatory evaluation is filed in the FAA Rules Docket 24722.

International Trade Impact Statement

This rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will not impose additional costs on either U.S. or foreign air carriers.

Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the FAA has determined that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This assessment is based on the regulatory evaluation of the final rule published on September 22, 1989, and on the fact that this amendment will not impose any additional cost on aircraft operators.

Federalism Implications

The regulations adopted herein will not have any direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This action clarifies an agency regulation and does not change any reporting requirements.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under the Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

THE AMENDMENT

Part 91 of the Federal Aviation Regulations (14 CFR Part 91) effective September 23, 1991.

The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-228) through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983).

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